

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

No. 08-01789 (CGM)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation  
of Bernard L. Madoff Investment Securities LLC,  
and Bernard L. Madoff,

Plaintiff,

v.

BSI AG, individually and as successor in interest to  
BANCO DEL GOTTARDO AG,

Defendant.

Adv. Pro. No. 12-01209 (CGM)

**STIPULATION AND ORDER REGARDING  
FILING OF AMENDED COMPLAINT AND SUBSEQUENT SCHEDULING**

Irving H. Picard (the “Trustee”), as trustee for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III, and the chapter 7 estate of Bernard L. Madoff, individually, and defendant BSI AG, individually and as successor in interest to BANCO DEL GOTTARDO AG (“Defendant,” and with the Trustee, the “Parties”), by and through their respective undersigned counsel, state as follows:

**WHEREAS**, the Trustee filed a complaint in this action on March 23, 2012;

**WHEREAS**, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff Sec.)*, 513 B.R. 222 (S.D.N.Y. 2014);

**WHEREAS**, on November 22, 2016, the Honorable Stuart M. Bernstein of the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) that, among other things, dismissed all claims against Defendant on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

**WHEREAS**, on March 6, 2017, the Bankruptcy Court issued a final judgment (the “Judgment”) dismissing all claims in this action and directing closure of this action absent appeal;

**WHEREAS**, on March 16, 2017, the Trustee timely appealed from the Judgment;

**WHEREAS**, on April 4, 2017, the Trustee filed a certification of direct appeal, and on October 12, 2017, the United States Court of Appeals for the Second Circuit (the “Second Circuit”) authorized that direct appeal;

**WHEREAS**, on February 25, 2019, the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “Appellate ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

**WHEREAS**, on August 29, 2019, Defendant and defendants in other adversary proceedings whose actions were dismissed by the Bankruptcy Court ET Decision filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the Appellate ET and Comity

Decision and which extended the stay of the Second Circuit's mandate until the Supreme Court's final disposition. *See* Petition for Writ of Certiorari, *HSBC Holdings PLC v. Picard*, No. 19-277 (Aug. 29, 2019), 2019 WL 4190391;

**WHEREAS**, on December 20, 2019, in adversary proceedings that are unrelated to the Action, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court's memorandum decision denying the Trustee's motion for leave to file an amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court's memorandum decision granting, in part, the motion to dismiss the Trustee's amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2013) (together, the "Good Faith Appeals");

**WHEREAS**, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee's petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25;

**WHEREAS**, on June 1, 2020, the Supreme Court denied Defendants' Petition for a Writ of Certiorari concerning the Appellate ET and Comity Decision. *See* Order, *HSBC Holdings PLC v. Picard*, No. 19-277 (2020), 2020 WL 2814770;

**WHEREAS**, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the Appellate ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF No. 1582, vacating the judgments of the Bankruptcy Court in connection with

the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with the Appellate ET and Comity Decision;

**WHEREAS**, on October 21, 2020, the mandate in connection with the above-referenced Appellate ET and Comity Decision was filed in the Bankruptcy Court, and the case was returned to the Bankruptcy Court;

**WHEREAS**, on March 17, 2021, the Court held a status conference at which counsel for the Trustee stated that it intended to wait to proceed with this action until the Second Circuit decided the Good Faith Appeals, docketed as *In re Bernard L. Madoff Inv. Sec. LLC (Picard v. Citibank, N.A. and Picard v. Legacy Cap. Ltd.)*, Case Nos. 20-1333 and 20-1334 (2d Cir.);

**WHEREAS**, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the “Good Faith Decision”);

**WHEREAS**, on September 15, 2021, the Court held a status conference at which counsel for the Trustee represented that it would seek to file an amended complaint in certain adversary proceedings;

**WHEREAS**, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court’s consolidated good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court’s decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) and *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM). *See* Mandate, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; Mandate, Case No. 20-1334 (2d Cir. Oct 13, 2021), ECF No. 187;

**WHEREAS**, on February 18, 2022, the Trustee provided counsel for Defendant with a draft amended complaint; and

**WHEREAS**, on March 11, 2022, counsel for Defendant consented to the filing of the draft amended complaint, without waiver of any defenses.

**IT IS HEREBY STIPULATED AND AGREED**, the Trustee shall file the amended complaint in final form (which shall be substantively the same as the draft amended complaint provided to defense counsel on February 18, 2022) (the “Amended Complaint”) on or before **April 8, 2022**.

**IT IS FURTHER STIPULATED AND AGREED**, the Defendant shall answer, move, or otherwise respond to the Amended Complaint on or before **June 3, 2022**. If Defendant files a motion to dismiss, the Trustee shall file any opposition to Defendant’s motion to dismiss on or before **August 5, 2022**, and Defendant shall file any reply brief in support of its motion on or before **September 9, 2022**.

**IT IS FURTHER STIPULATED AND AGREED**, the Parties reserve all rights, arguments, objections, and defenses they may have, and entry into this Stipulation and Order shall not impair or otherwise affect any such rights, arguments, objections, and defenses, including without limitation, challenges to personal jurisdiction, and expressly including any potential motions by Defendant under Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6).

**IT IS FURTHER STIPULATED AND AGREED**, the above deadlines granted by this Stipulation and Order are without prejudice to either party seeking future extensions of time.

*[Remainder of Page Intentionally Left Blank]*

Dated: April 5, 2022  
New York, New York

By: /s/ David J. Sheehan

**BAKER & HOSTETLER LLP**

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: dsheehan@bakerlaw.com

Eric R. Fish

Email: efish@bakerlaw.com

Robertson D. Beckerlegge

Email: rbeckerlegge@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for  
the Substantively Consolidated SIPA  
Liquidation of Bernard L. Madoff  
Investment Securities LLC and the Chapter 7  
Estate of Bernard L. Madoff*

By: /s/ Adam Lavine

**KOBRE & KIM**

800 Third Avenue

6th Floor

New York, New York 10022

Telephone: (212) 488-1200

Adam Lavine

Email: adam.lavine@kobrekim.com

Zachary D. Rosenbaum

Email:

zachary.rosenbaum@kobrekim.com

Nathan Richardson

Email: nathan.richardson@kobrekim.com

*Attorneys for Defendant, BSI AG,  
individually and as successor in interest  
to BANCO DEL GOTTARDO AG*

**SO ORDERED.**

**Dated: April 7, 2022  
Poughkeepsie, New York**



/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris  
U.S. Bankruptcy Judge**